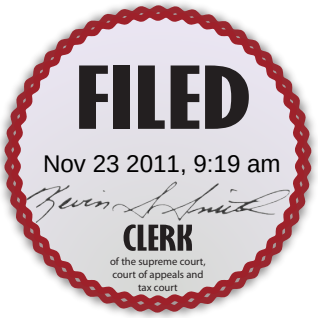

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IN THE COURT OF APPEALS OF INDIANA

L.E.,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 93A02-1104-EX-445
	)	
REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT, and F.W.C.S.,	)	
	)	
Appellees,	)	

APPEAL FROM THE REVIEW BOARD OF THE
DEPARTMENT OF WORKFORCE DEVELOPMENT
Review Board
Cause No. 11-R-1646

November 23, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

L.E.'s[1] weekly unemployment insurance benefit payments were reduced pursuant to Indiana Code section 22-4-15-4(b) because he began receiving pension payments. L.E. raises one issue for our review, which we restate as whether his unemployment insurance benefit payments were correctly reduced. Concluding L.E.'s unemployment payments were properly reduced, but that a calculation error was made in determining the amount by which his payments are to be reduced, we remand for a corrected decision.

Facts and Procedural History

L.E. was employed by Fort Wayne Community Schools ("Employer") from 1979 to October 2010. During his employment, Employer contributed to a pension fund on behalf of L.E. After his employment with Employer ended, L.E. began receiving unemployment insurance benefits in the amount of $390 per week. However, L.E. also began receiving pension payments. On October 23, 2010, L.E. received a three-month retroactive pension payment of approximately $3,763, and L.E. began receiving approximately $1,464 on the fifteenth of every month on November 15, 2010. On November 29, 2010, a claims deputy of the Indiana Department of Workforce Development determined L.E.'s unemployment insurance benefits would be reduced based on his monthly pension payment.

[1] For the reasons stated in Moore v. Review Bd. of the Ind. Dep't of Workforce Dev., 951 N.E.2d 301 (Ind. Ct. App. 2011), I would include the parties' full names. However, my colleagues find that Indiana Code section 22-4-19-6(b) and Administrative Rule 9(G)(4)(d) mandate confidentiality and thus require the use of initials. They are not persuaded that Administrative Rule 9(G)(1)(b)(xviii) permits the use of names.

L.E. appealed the deputy's determination, and a hearing was held on January 4, 2011, before an Administrative Law Judge ("ALJ"). Employer chose not to participate in the hearing, and on January 10, 2011, the ALJ modified the deputy's determination and concluded that L.E. was not eligible for unemployment benefits for any week that he received deductible income payments equal to or exceeding his weekly unemployment benefit amount. In March the ALJ vacated his decision and on March 21, 2011, the ALJ issued a corrected decision. Rather than determining L.E. would not receive any unemployment benefits for weeks that he received pension payments greater than his weekly benefit amount, the ALJ concluded that his once-per-month pension payment should be apportioned to each week of the respective month. The ALJ determined that L.E.'s weekly unemployment insurance benefit payment amount should be reduced by $334 for the week ending October 23, 2010, $314 for the weeks ending October 2 through October 30, 2010, and $366 for the week ending November 15, 2010 and thereafter. L.E. appealed the ALJ's decision, and the Review Board of the Indiana Department of Workforce Development ("Review Board") affirmed the ALJ's modified decision, incorporating by reference the ALJ's findings of fact and conclusions of law. L.E. now appeals.

Discussion and Decision

I. Standard of Review

Indiana Code section 22-4-17-12(a) provides "[a]ny decision of the review board shall be conclusive and binding as to all questions of fact," but either party may "appeal the decision to the court of appeals of Indiana for errors of law under the same terms and conditions as govern appeals in ordinary civil actions." We are limited to a two-part

inquiry into the "sufficiency of the facts found to sustain the decision" and the "sufficiency of the evidence to sustain the findings of facts." Ind. Code. § 22-4-17-12(f). Under this standard, basic facts are reviewed for substantial evidence, conclusions of law are reviewed for their correctness, and ultimate facts are reviewed to determine whether the ALJ's finding is a reasonable one. Indianapolis Concrete, Inc. v. Unemployment Ins. Appeals of the Indiana Dep't of Workforce Dev., 900 N.E.2d 48, 50 (Ind. Ct. App. 2009).

II. The ALJ's Decision

> (a) An individual shall be ineligible for waiting period or benefit rights for any week with respect to which the individual receives, is receiving, or has received payments equal to or exceeding the individual's weekly benefit amount in the form of:
>
> * * *
>
> (2) any pension, retirement or annuity payments, under any plan of an employer whereby the employer contributes a portion or all of the money. . . .
>
> * * *
>
> (b) If the payments described in subsection (a) are less than an individual's weekly benefit amount an otherwise eligible individual shall not be ineligible and shall be entitled to receive for such week benefits reduced by the amount of such payments.

Ind. Code § 22-4-15-4.

Under Indiana's unemployment compensation system, unemployment insurance benefits are funded by a tax contribution imposed upon Indiana employers. Indianapolis Concrete, 900 N.E.2d at 50. The Department of Workforce Development (the "Department") configures the contribution rate applicable to each employer on an annual basis. Id. Employers have "experience accounts" with the Department, and an employer's experience account is charged when a qualifying employee receives unemployment benefits based upon employment with that employer. Id. When a company's employees file more unemployment claims, its contribution rate will increase.

Id. The purpose of reducing an individual's unemployment benefits by a pension payment he or she receives where the previous employer funded some or all of the pension is to avoid forcing the employer to pay such benefits twice. See Talley v. Review Bd., 119 Ind. App. 680, 684, 88 N.E.2d 157, 159 (1949).

Here, L.E. testified at the administrative hearing that Employer funded at least some of his pension. L.E. first argues that because Employer did not attend the administrative hearing, disqualification of benefits should not apply. We disagree. We find no requirement that an employer attend an administrative hearing reviewing a claimant's unemployment insurance benefit payments in the applicable statutes, nor does L.E. cite to any source providing such a requirement. See Ind. Appellate Rule 46(A)(8)(a) (requiring an appellant cite to authorities in support of its contentions on appeal).

L.E. next attempts to argue that the person he spoke with at the Department "instructed him to keep filing his claim each week and stated he (Appellant) did not have to pay it back and not to worry about it," Amended Appellant's Brief at 5, and that the Department is bound by these statements because the person he spoke with is an agent of the Department. We need not reach the merits of L.E.'s argument because the evidence presented at the administrative hearing, consisting of L.E.'s own testimony, does not show that the woman he spoke with at the Department said anything suggesting that he would not have to pay back any overpayments from the Department. His testimony at the administrative hearing was that the woman he spoke with told him to continue signing up for benefits, and that soon thereafter the Department contacted him because he owed them back money. L.E. could not reasonably have relied on her instructions that he

should continue signing up for benefits as an indication that he would not have to pay back an overpayment from the Department. Further, he cites no legal authority for his assertion that because the overpayments were not his fault, he should not have to pay them back to the Department. See Ind. Appellate Rule 46(A)(8)(a) (requiring an appellant cite to authorities in support of its contentions on appeal).

Last, L.E. appears to argue that the ALJ's initial decision, which attributed each monthly pension payment to one individual week for the purposes of determining if L.E. was eligible for unemployment benefits for that week, was incorrect. However, this error was corrected by the ALJ in his subsequent corrected decision.

We commend the State for pointing out and admitting the ALJ's miscalculation in his corrected decision. The reduction to L.E.'s weekly unemployment benefit was determined to be $366 effective the week ending November 15, 2010 and thereafter, but the reduction should be $338 per week.[2] We remand to the ALJ for a corrected decision.

Conclusion

L.E.'s pension was funded, at least in part, by Employer. Pursuant to Indiana Code section 22-4-15-4, the ALJ properly reduced his weekly unemployment insurance benefit payment by the amount he received from his pension, except that the ALJ miscalculated the amount L.E. receives from his pension each week. We therefore remand to the ALJ for a corrected decision consistent with this opinion.

Remanded.

BARNES, J., and BRADFORD, J., concur.

[2] $1,464 x 12 / 52 = $338.